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STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF LABOR & ECONOMIC GROWTH
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BILL ANALYSIS

BILL NUMBER: House Bill 4742 (H-1) Draft 2
TOPIC: Allow for discount for participating in managed care option for PIP
SPONSOR: Representative Joe Hune
CO-SPONSORS: Representatives Edward Gaffney, Dave Hildenbrand, Fulton Sheen, Scott Hummel, Judy Emmons, Jim Marleau
COMMITTEE: House Committee on Insurance
Analysis Done: June 21, 2005

POSITION

The Office of Financial and Insurance Services (OFIS) opposes this legislation.

PROBLEM/BACKGROUND

A Michigan no-fault policy contains three mandatory coverages: personal injury protection (PIP), property protection (PPI) and residual bodily injury and property damage liability insurance (BI/PD). The PIP coverage provides unlimited medical, hospital and rehabilitation for all reasonable and necessary expenses related to an accident. In a serious accident this can result in hundreds of thousands of dollars of expenses, since it can include home and auto modification expenses (to accommodate a wheelchair, for instance), wage loss benefits for up to three years, vocational classes (should the injuries require the person to be trained for a new job), and \$20 per day for any services needed to hire someone to provide you with services such as cooking, yard work, child care or house work. These same benefits would also be available to any friend or relative driving or riding in the car, if he or she did not have his or her own insurance.

Because medical benefits for auto-related injuries in Michigan are unlimited, the cost of coverage for catastrophic auto accident injuries is reflected in the PIP portion of the policy. Policyholders may coordinate their PIP coverage with other health or disability coverage, which results in a small reduction in the PIP premium. In this instance, the health insurer would pay for all claims related to an auto accident, up to the limits of the health insurance policy, and the auto insurer would pay any outstanding amounts.

However, many policyholders are not eligible to coordinate due to restrictions on their health insurance policy or because they do not have health insurance coverage. Even with this coordination, the PIP premium has continued to rise since the enactment of no-fault due to escalating medical care costs.

DESCRIPTION OF BILL

The proposed legislation would add Chapter 21A to the Michigan Insurance Code to allow policyholders to select a managed care option for PIP coverage in exchange for a discount on their auto insurance policy. The managed care option would require the policyholder to seek medical care and treatment in an approved course of treatment provided by an approved provider for all non-emergency injuries resulting from an auto accident.

SUMMARY OF ARGUMENTS

Pro

The proposed legislation may provide some relief from increasing auto insurance premiums but still allow policyholders to obtain quality care for all reasonable and necessary services as required by statute. This reduction in premium may provide additional incentive for citizens to obtain and maintain insurance coverage on their vehicles and may in fact lead to a reduction in uninsured motorists in the state.

The current statutory language requires insurance companies to provide coverage for all reasonably necessary products and services. Unfortunately, this statutory language is subject to different interpretations, which leads to conflicts between insurers and policyholders and insurers and health care providers. By selecting the proposed managed care option, proponents believe policyholders would be assured that their care would be coordinated and approved by their insurance company and their claims would be promptly paid, resulting in fewer disputes with their insurer over whether a service is reasonable or necessary. Further, policyholders would make the choice themselves whether they wanted to choose this proposed managed care option in exchange for a reduction in premium or whether they wanted to keep their traditional no-fault policy that would allow them to continue to seek treatment from the health care provider of their choosing.

Con

The proposed legislation would constitute a serious departure from the underlying premise of Michigan's current no-fault statute that requires auto insurers to pay for all reasonable and necessary products and services. Therefore, because it is imperative that the legislation contain a balance of significant safeguards and benefits to Michigan consumers, amendatory language is warranted that would require prior approval by OFIS. This amendatory language should specify the procedure applicable to the

Commissioner's consideration of proposed managed care option plans for approval, including an appropriate time period for such review and approval prior to implementation and criteria for the Commissioner to apply in deciding whether to approve a proposed managed care plan.

The proposed legislation does not make it clear that no-fault insurers who choose to offer a managed care option must continue to offer the traditional no-fault coverage. Amendatory language should be added to ensure that insurers must continue to offer the traditional no-fault coverage in addition to any optional managed care coverage.

Insurance companies may be interested in participating in this program in an effort to reduce the amount they pay for PIP. However, companies that choose to offer such a program must be fully aware that this proposal does not release them from their responsibility of providing unlimited benefits for all reasonably necessary products and services under the statute. The insurer should not be allowed to cap benefits or limit coverage under this proposal. Therefore, companies must be fully aware of this requirement when devising and enforcing all treatment protocols to prevent such a restriction from occurring and to prevent possible litigation and litigation expenses over any perceived restriction of statutorily required benefits. This may be a difficult balance for insurance companies to achieve given the broad interpretation of the reasonable and necessary statutory language. This concern would have to be clarified in amendatory language to ensure that insurers are in compliance with the no-fault act and that benefits would not be capped or limited for those who chose the managed care option.

Section 3109a of the Insurance Code of 1956, MCL 500.3109a, currently requires an insurer to obtain prior approval from OFIS before implementation of deductibles or exclusions related to PIP coverage. This ensures that policyholders will not be required to pay an unreasonable deductible amount for injuries related to an auto accident. The proposed legislation would allow an insurer to establish deductibles or co-pays or "similar sanctions". However, the proposed legislation does not require OFIS approval of any related deductibles or co-pays, which may allow insurers to establish unreasonable deductible limits with no OFIS oversight. A large deductible could be an unreasonable burden on the policyholder. Amendatory language should be added that would include some OFIS oversight to ensure consumers are adequately protected from unreasonable deductible or co-pay limits and to further define "sanctions". Additional amendatory language that would require companies that offer a managed care option to establish standardized penalties, sanctions and/or deductibles may also be beneficial to the consumer.

The proposed legislation requires that an insured sign a written acknowledgement that they received a written disclosure statement that details the provisions of the managed care option, including cost savings and an explanation of any penalties that may be incurred by the policyholder. Earlier versions of this proposed legislation required OFIS Commissioner approval of a standardized disclosure statement. This OFIS oversight language has subsequently been removed from the latest draft of the proposed legislation. OFIS oversight of this disclosure requirement is crucial as it will be imperative that policyholders who agree to participate in the proposed managed care option are fully aware of the details of the program before enrollment to eliminate any

misunderstandings about what they will be required to do in the event of an accident. If policyholders do not fully understand that they will be required to seek treatment from an approved doctor and follow an approved protocol, much like in a managed care situation, and instead seek treatment from an unapproved provider, the policyholder's claim may be delayed, denied or a penalty or deductible may be required. Because not all insurers may be as adept as others in drafting understandable disclosure language, amendatory language should be included to provide OFIS with some oversight of disclosure language to ensure that consumer's rights are protected and that they receive the same information, regardless of which insurance company issues the policy. Amendatory language that would require companies to outline "opt-out" provisions for policyholders in the event that they later reconsider the managed care PIP policy should also be included in the proposed legislation.

Policyholders must also be aware that their selection may affect more than just themselves, as their no-fault policy also provides benefits to others who are injured that do not have insurance coverage of their own. These misunderstandings could lead to policyholders having to incur additional out of pocket expenses for his or her treatment that would not have been incurred otherwise. The policyholder may also be exposed to additional litigation from someone injured in or by the policyholder's vehicle if the injured person does not have his or her own insurance coverage if they believe they have not received adequate treatment under the managed care option. The additional expenses and exposure to litigation appear to go against one of the basic tenets of Michigan's no-fault system that protect an injured person from having to sue to collect benefits or a policyholder from having to protect themselves from such litigation.

The proposed legislation appears to violate one of the basic requirements of Michigan's Essential Insurance Act (EIA). The EIA requires insurers to treat all of their policyholders alike and to offer the same discounts to all policyholders. The proposed legislation would only require insurers to offer managed care in "all areas where the managed care option is available". This language appears to allow the insurance companies to pick and choose those policyholders who would be eligible for the managed care option and corresponding discount, which is in violation of the EIA. OFIS continues to have concerns that if a company were to offer a managed care option that it would be available to all citizens in all areas of the state, just as other discounts under the Essential Insurance Act must be offered to everyone. This would require that all policyholders be offered access to a wide range of providers that are readily available to all participants, regardless of where they reside in the state. Amendatory language should be included to clarify these availability issues.

Additionally, the legislation does not contain any requirements regarding network adequacy, if an insurer chooses to offer a managed care plan requiring the use of providers within a network. OFIS is concerned that even those living within the geographic area covered by the plan might not be adequately covered. Furthermore, the legislation does not address the situation where an individual who is covered by a policy who lives in another geographic area with no available network are to obtain their "reasonable and necessary" expenses related to the accident, benefits to which they are entitled by law.

FISCAL/ECONOMIC IMPACT

OFIS has identified the following revenue or budgetary implications in the bill as follows:

(a) To the Office of Financial and Insurance Services:

Budgetary:

Revenue:

Comments: The OFIS may incur significant additional expense to review and monitor all companies that choose to offer managed care options to their policyholders. OFIS may also incur significant additional expense to ensure that consumers are aware of the amendments contained in this legislation through mailings and/or updates to current consumer publications.

(b) To the Department of Labor and Economic Growth: None known.

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan: None known.

Budgetary:

Revenue:

Comments:

(d) To Local Governments within this State: None known.

Comments:

OTHER STATE DEPARTMENTS

None known.

ANY OTHER PERTINENT INFORMATION

This proposed legislation is similar to legislation introduced in a previous and current legislative sessions.

ADMINISTRATIVE RULES IMPACT

The proposed legislation would amend the Michigan Insurance Code. The OFIS does have general rulemaking authority under the Insurance Code of 1956, 1956 PA 218.

A handwritten signature in cursive script, appearing to read "Linda A. Watters", written over a horizontal line.

Linda A. Watters
Commissioner

6-21-05

Date